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11 Santillan et al.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO/OAKLAND DIVISION

15 MARIA SANTILLAN, FLORA
RODRIGUEZ SANTILLAN, JAIME
16 RODRIGUEZ SANTILLAN, ANGELA
DESOUZA, MARCOS SOSA
17 CARTAGENA, ZIBER ISMAILI, ANITA
LASBREY, ZOILA LOPEZ-GONZALEZ,
18 RAFAELA VALDEZ PARRA, MARIA
VALDA MOHAMAD, on behalf of
19 themselves and all others similarly situated,

20 Plaintiffs,

21 v.

22 JOHN ASHCROFT, Attorney General of the
United States; TOM RIDGE, Secretary for
Department of Homeland Security; THE
23 UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES ("USCIS");
24 EDUARDO AGUIRRE, JR., USCIS Director;
DAVID STILL, USCIS San Francisco
25 District Director,

26 Defendants.

Case No. (Not yet assigned)

**COMPLAINT FOR MANDAMUS,
DECLARATORY AND INJUNCTIVE
RELIEF**

CLASS ACTION

**ADMINISTRATIVE PROCEDURES
ACT CASE**

I. INTRODUCTION

This suit seeks to safeguard basic rights, such as the right to work, to Plaintiffs, who are legal immigrants in the United States. Federal immigration judges and the Executive Office for Immigration Review ("EOIR") have deemed Plaintiffs to be lawful permanent residents, entitled to documentation of their legal immigrant status and the rights of lawful permanent residents. But the government has refused or failed to perform its ministerial duty to issue documentation of legal status to Plaintiffs. The government's inaction has caused Plaintiffs profound injuries, ranging from the inability to be employed and support their families to the acute fear of being detained and deported, because they are unable to demonstrate their legal status to officials.

Plaintiffs, by and through their undersigned counsel, sue John Ashcroft, Tom Ridge, the United States Citizenship and Immigration Services ("USCIS"), Eduardo Aguirre Jr., and David Still (collectively "Defendants"), and allege as follows:

1. This is a class action suit on behalf of persons who have successfully secured relief from removal or deportation proceedings initiated by Defendants. The EOIR, which encompasses the Immigration Courts of the United States and the Board of Immigration Appeals ("BIA"), have granted each of the Plaintiffs the status of "Lawful Permanent Resident" ("LPR"). Immigration and Nationality Act ("INA") § 245, 8 U.S.C. § 1255. As explained herein, Plaintiffs and the class members they seek to represent have been harmed by Defendants' failure to fulfill their statutory and regulatory obligations to register aliens granted LPR status during removal proceedings. Plaintiffs have furthermore been harmed by Defendants' failure to provide these LPRs evidence of registration.

2. Specifically, the failure of Defendants to issue even temporary documentation of registration as LPRs has prevented Plaintiffs from securing and retaining employment. Without official documentation, Plaintiffs are prevented from re-entering the U.S. if they travel abroad and they live in fear of being detained or deported. Lack of documentation also prevents these LPRs from obtaining Social Security cards, drivers' licenses, in-state tuition and financial aid for college and unemployment benefits.

3. The EOIR has issued orders that declare Plaintiffs to be LPRs. The orders

granting LPR status are final and are not under appeal.

4. Plaintiffs have attempted to register as LPRs pursuant to their legal obligation and have attempted to obtain temporary documentation of their registration pending issuance of permanent documentation. They have nonetheless been denied evidence of registration as LPRs. All of the class representatives have been waiting at least several months for documents evidencing registration, and many Plaintiffs have already waited in excess of a year.

5. Plaintiffs seek mandamus, declaratory and injunctive relief requiring Defendants to issue Plaintiffs and class members proper evidence of registration as LPRs pending receipt of their Permanent Resident Cards.

II. JURISDICTION

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (federal question jurisdiction) because Plaintiffs’ claims arise under the laws of the United States, specifically, the INA (8 U.S.C. § 1101 *et seq.*) *as amended* by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570, and the regulations arising there under. This Court also has jurisdiction under 28 U.S.C. §§ 1361 (Mandamus Act) and 2201 (Declaratory Judgment Act), and 5 U.S.C. § 701 *et seq.* (Administrative Procedure Act (“APA”)). This Court may grant relief pursuant to 28 U.S.C. §§ 1361, 2202, and 5 U.S.C. § 702 *et seq.*

7. There are no administrative remedies available to Plaintiffs or class members to redress the grievances described herein. This action challenges the failure of Defendants to issue evidence of registration as LPRs that is due to Plaintiffs and does not challenge any discretionary act by Defendants. The action does not challenge the granting or denial of individual applications. Therefore, the jurisdictional limitations of INA § 242, 8 U.S.C. § 1252, do not apply.

III. VENUE

8. Venue lies in this Court under 28 U.S.C. § 1391(e), the venue statute applicable to civil actions in which a defendant is an officer of the United States acting in his official capacity. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendant David Still resides in this

1 district. Alternatively, venue is proper under 28 U.S.C. § 1391(e)(2) because a substantial part of
2 the events or omissions giving rise to the claim occurred in this judicial district. In particular, the
3 Immigration Court in San Francisco has granted LPR status, and the San Francisco district office
4 of the U.S. Citizenship and Immigration Service (“USCIS”) has subsequently failed or refused to
5 issue evidence of registration for several of the named Plaintiffs.

6 **IV. INTRADISTRICT ASSIGNMENT**

7 **9.** Pursuant to Civil Local Rule 3-2(c), this action arises in the county of San
8 Francisco and is accordingly appropriately assigned to the San Francisco/Oakland division of this
9 Court.

10 **V. DEFENDANTS**

11 **10.** John Ashcroft is the Attorney General of the United States. He is charged with
12 administering and enforcing the immigration laws. 8 U.S.C. §§ 1103(a), 1103(g). The Attorney
13 General is the head of the EOIR, to which he has delegated his authority to review administrative
14 determinations in immigration proceedings. He is sued in his official capacity.

15 **11.** Tom Ridge is the U.S. Secretary for Homeland Security. He is charged with,
16 among other things, “[a]ll authorities and functions of the Department of Homeland Security to
17 administer and enforce the immigration laws.” 8 C.F.R. § 2.1; 8 U.S.C. § 1103(a). He is sued in
18 his official capacity.

19 **12.** The USCIS is a division of the Department of Homeland Security and is an
20 agency of the U.S. government. The USCIS has assumed the immigration benefits and services
21 functions of the Immigration and Naturalization Service (“INS”), which was eliminated effective
22 March 1, 2003. The USCIS accordingly has responsibility for administering the immigration
23 laws, including the INA and applicable regulations.

24 **13.** Eduardo Aguirre, Jr. is the National Director of the USCIS. In his capacity as
25 Director, Mr. Aguirre administers the immigration laws on behalf of the Secretary for Homeland
26 Security and the DHS throughout the United States. He is sued in his official capacity.

27 **14.** David Still is District Director of the San Francisco District of the USCIS. In his
28 capacity as the San Francisco District Director, Mr. Still administers the immigration laws on

1 behalf of the Secretary for Homeland Security and the DHS in all of the counties that comprise
2 the judicial district of the Northern District of California: Alameda, Contra Costa, Del Norte,
3 Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Sonoma, Santa Clara,
4 Santa Cruz, San Benito, and Monterey. Mr. Still also administers the immigration laws for the
5 following California counties: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno,
6 Glenn, Inyo, Kern, King, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer,
7 Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama,
8 Trinity, Tulare, Tuolumne, Yolo, and Yuba. *See* 8 CFR § 100.4. In his official capacity, Mr. Still
9 has decision-making authority with respect to the matters alleged in this complaint by Plaintiffs
10 and class members whose immigration cases are in the control of the San Francisco District
11 Office.

12 **VI. RELEVANT STATUTORY AND REGULATORY BACKGROUND**

13 **Removal, Cancellation of Removal, and LPR Status**

14 **15.** Defendants, specifically the USCIS acting under the authority of the Attorney
15 General and the Secretary for the DHS, have the unique authority and duty to administer and
16 enforce the immigration laws of the United States. 8 U.S.C. § 1103.

17 **16.** The government may initiate removal proceedings against aliens it deems to be
18 deportable under 8 U.S.C. §§ 1182(a) and 1227(a). 8 U.S.C. § 1229a(a)(2). Generally, removal
19 proceedings are initiated with service of a Notice to Appear (“NTA”) to the alien. The NTA
20 advises the alien of the nature of the proceedings, the charges of deportability against him or her,
21 the time and place at which the proceedings will be held, and the consequences for failing to
22 appear. 8 U.S.C. § 1229(a); 8 C.F.R. §1003.15.

23 **17.** The NTA is also filed with the Immigration Court by representatives of DHS. 8
24 C.F.R. § 1003.14. The filing of the NTA vests jurisdiction with the Immigration Court, which
25 acts under the authority of the Attorney General within the EOIR. 8 C.F.R. §§ 1001.1(l),
26 1003.14.

27 **18.** Removal proceedings are conducted under the sole jurisdiction of EOIR. 8 C.F.R.
28 §§ 1003.0 *et seq.* (describing the organizational structure of EOIR), 1003.9-1003.44 (describing

1 the Immigration Court and the rules of procedure for removal proceedings).

2 **19.** An alien may seek various forms of relief from removal, including cancellation of
3 removal, suspension of deportation, adjustment of status, and creation of a record of lawful
4 admission for permanent residence. 8 C.F.R. § 1240.11.

5 **20.** In particular, an alien may seek cancellation of removal and adjustment of status
6 under 8 U.S.C. § 1229b(b), which permits the Attorney General (and an immigration judge acting
7 with the authority of the Attorney General) to “cancel removal of, and adjust to the status of an
8 alien lawfully admitted for permanent residence” under certain prescribed circumstances. *Id.*; 8
9 C.F.R. § 1240.1.

10 **21.** The term “lawfully admitted for permanent residence” means “the status of
11 having been lawfully accorded the privilege of residing permanently in the United States as an
12 immigrant in accordance with the immigration laws, such status not having changed.” 8 U.S.C.
13 §1101(a)(20). Such status terminates only upon entry of a final administrative order of exclusion
14 or deportation. 8 C.F.R. § 1001.1(p).

15 **22.** Title 8, section 1255 of the U.S. Code sets forth the categories of aliens who, at
16 the discretion of the Attorney General or Secretary for Homeland Security, may adjust their status
17 to that of an LPR.

18 **23.** Aliens who have resided for a long period of time in the United States and whose
19 removal would cause exceptional and extremely unusual hardship to the alien’s spouse, parent or
20 child who is a U.S. citizen or LPR may obtain cancellation of removal and adjustment of status
21 under 8 U.S.C. § 1229b(b)(1)(D).

22 **24.** Victims of domestic abuse may obtain cancellation of removal if they meet certain
23 criteria. 8 U.S.C. § 1229b(b)(2).

24 **25.** Generally, an alien can adjust to LPR status if he or she was inspected and
25 admitted or paroled into the United States or is eligible under 8 U.S.C. §1255(i), as long as the
26 alien has a visa immediately available at the time of filing and is not otherwise statutorily
27 ineligible. 8 C.F.R. §§ 245.1, 1245.1. Parents, spouses, and children of U.S. citizen adults are
28 eligible to adjust as long as they are not statutorily ineligible. INA § 245(a), 8 U.S.C 1255(a).

1 **26.** For both cancellation of removal and adjustment of status, the alien must
2 affirmatively request relief by filing the proper forms, relevant evidence, and filing fees. 8 C.F.R.
3 §§ 1240.20, 1240.21 (describing procedures for adjustment of status and cancellation of removal).
4 In particular, aliens applying for adjustment of status or cancellation of removal must be
5 fingerprinted at an Application Support Center (“ASC”).

6 **27.** On information and belief, DHS learns from EOIR or from the alien who is in
7 removal proceedings that the alien may be seeking adjustment of status or cancellation of
8 removal. When DHS learns that an alien is seeking adjustment of status or cancellation of
9 removal, the USCIS commences background checks on the individual. A DHS representative is
10 assigned to each alien file. The DHS representative evaluates the file and determines whether the
11 background checks have unearthed any adverse findings.

12 **28.** After the alien has submitted the required forms and fees, and the fingerprints
13 have cleared through the Federal Bureau of Investigation (“FBI”), the alien appears before an
14 Immigration Judge for a hearing on the merits of the removal. The DHS representative may
15 present all relevant information obtained in the background checks to the Immigration Judge at
16 the hearing. The Immigration Judge then approves or denies the request for cancellation of
17 removal and adjustment of status.

18 **29.** If the application for adjustment to LPR status is granted, the alien acquires LPR
19 status as of the date of the Immigration Judge’s order. 8 U.S.C. § 1255(b). The Attorney General
20 must record the alien’s lawful admission for permanent residence as of the date of the
21 Immigration Judge’s cancellation of removal. 8 U.S.C. § 1229b(b)(3).

22 **30.** When an Immigration Judge grants adjustment to LPR status during removal
23 proceedings, the decision is not merely a recommendation to the USCIS, but an appealable order.

24 **31.** The Immigration Judge’s order regarding the alien’s removal, cancellation of
25 removal, or other disposition of the case may be appealed to the Board of Immigration Appeals if
26 a Notice to Appeal is filed within 30 calendar days after the stating of an Immigration Judge’s
27 oral decision or the mailing of a written decision, so long as the filing party has not waived
28 appeal. 8 C.F.R. § 1003.38.

1 32. Except when certified to the Board of Immigration Appeals (“BIA”), the decision
2 of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to
3 appeal if no appeal is taken within 30 days, whichever occurs first. 8 C.F.R. §§ 1003.39,
4 1240.14, 1240.15. The USCIS is bound to give full effect to final decisions of the Immigration
5 Judge.

6 33. A party may appeal an order to the BIA. 8 C.F.R. 1003.1. LPR status may be
7 achieved when the BIA affirms an immigration court’s order granting LPR status, or when the
8 BIA reverses an immigration court’s denial of LPR status.

9 **Procedures After Adjustment to LPR Status**

10 34. After granting relief from removal in the form of cancellation and adjustment of
11 status, the Immigration Judge issues a written order indicating the section of the law under which
12 relief was granted. No other documentation or photograph identification is given to the
13 immigrant that verifies that he or she is an LPR.

14 35. Upon information and belief, after LPR status is granted to an alien in removal
15 proceedings, the alien’s file is transferred to the USCIS to enable registration of the LPR and to
16 provide evidence of registration. Registration is required of aliens who adjust to LPR status in the
17 United States.

18 36. Registration commences with ADIT (“Alien Documentation, Identification and
19 Telecommunication”) processing. An alien must undergo ADIT processing to initiate preparation
20 of a Permanent Resident Card (Form I-551), which constitutes evidence of LPR status.¹ 8 C.F.R.
21 § 210.5 (b). During ADIT processing, the alien presents to his or her local USCIS office proof of
22 identity, fingerprints, photographs and a signature. *Id.* Regulations require the USCIS to issue a
23 Permanent Resident Card to an LPR “subsequent to the date of adjustment.” *Id.*

24 37. Initiation of ADIT processing and registration is routinely taking more than six
25 months and in some cases more than a year after adjustment to LPR status for those who adjust
26 during removal proceedings. These LPRs are without adequate documentation of their LPR

27 _____
28 ¹ The Permanent Resident Card was formerly known as the Alien Registration Receipt Card and
is commonly referred to as a “Green Card.”

1 status during the long period between being granted LPR status and the initiation of ADIT
2 processing.

3 **38.** Once an Immigration Judge adjusts an alien's status, there are no statutes or
4 regulations that require the USCIS to conduct any further investigation prior to either initiating
5 ADIT processing or to issuing a Permanent Resident Card.

6 **39.** Even if the USCIS initiates removal proceedings against an LPR, the LPR is
7 entitled to evidence of permanent resident status in the form of a temporary Form I-551 stamp or
8 Permanent Resident Card until ordered deported or excluded from the United States. 8 C.F.R. §
9 264.5(g).

10 **40.** Registration of LPRs and issuance of evidence of registration (Permanent
11 Resident Cards and temporary I-551 stamps) are ministerial acts, required to establish the record
12 of lawful permanent residence. The USCIS has an obligation to the LPR to complete these
13 ministerial acts as a direct result of a final order of an Immigration Judge.

14 **41.** The USCIS is the only U.S. agency that registers aliens who adjust to LPR status
15 in the United States.

16 **42.** The USCIS is also the only U.S. agency that provides evidence of registration to
17 LPRs who adjust in the United States. The USCIS has a duty to register LPRs and to provide
18 evidence of registration.

19 **43.** The Permanent Resident Card and temporary I-551 stamp demonstrate
20 employment eligibility, eligibility to enter the United States lawfully, and authorization to work
21 and live in the United States. The Permanent Resident Card represents security to its holder,
22 instantly communicating to law enforcement officials and U.S. employers the holders' right to
23 permanently live and work in the United States.

24 **Statutes and Regulations Requiring Documentation**

25 **44.** The unreasonableness of Defendants' inaction as to the ministerial task of issuing
26 temporary or permanent evidence of registration as an LPR is compounded by the crucial value
27 and necessity of such evidence to Plaintiff class members.

28 **45.** An LPR who has attained the age of 18 is required by law to keep his Permanent

1 Resident Card with him at all times. Failure to do so is a criminal misdemeanor. 8 U.S.C. §
2 1304(e).

3 **46.** Defendants have issued regulations that require LPRs to provide evidence of their
4 LPR status in order to be re-admitted into the United States after foreign travel. To be admitted to
5 the United States, LPRs must present one of the specifically enumerated documents, including the
6 temporary I-551 stamp or Permanent Resident Card. 8 C.F.R. § 211.1(a). An Immigration
7 Judge's order adjusting to LPR status is not one of the listed documents that may be presented for
8 admission.

9 **47.** Congress heightened the importance of the Permanent Resident Card with its
10 adoption of the Immigration Reform and Control Act of 1986 ("IRCA"), Pub.L. No. 99-603. In
11 IRCA, Congress amended the INA to prohibit the unlawful employment of aliens who were not
12 LPRs unless they have special employment authorization by the Attorney General. 8 U.S.C. §§
13 1324a(b)(1)(B),(C) & (D), 1324a(h)(3). Domestic employers are subject to both civil and
14 criminal penalties if they knowingly hire an unauthorized alien or fail to comply with the
15 verification process established by the statute. 8 U.S.C. §§ 1324a(a), 1324a(e) & (f). IRCA's
16 verification system requires that an employer attest that it has confirmed a prospective employee's
17 identity and employment authorization by reviewing one or more statutorily designated
18 documents. 8 U.S.C. § 1324a(b).

19 **48.** Although a Permanent Resident Card is not the only document establishing
20 employment eligibility, possession of the Permanent Resident Card is often a prerequisite for
21 obtaining some of the other accepted documents, such as a driver's license or Social Security
22 card. 8 U.S.C. § 1324a(b). Numerous class members have been unable to secure or retain work
23 as a result of the lack of acceptable documentation of employment eligibility.

24 **49.** The Immigration Judge's order, which lacks a photograph of the alien and other
25 security features, is not recognized by statute as evidence of registration necessary for
26 employment eligibility or identity. 8 U.S.C. § 1324a(b)(1)(B),(C) & (D); 8 C.F.R. § 274a.2(b)(v).

27 **50.** The Immigration Judge's order granting LPR status is not recognized as evidence
28 of LPR status in the United States for the purpose of obtaining a Social Security card. 8 C.F.R.

1 § 422.107.

2 51. Aliens granted LPR status by an Immigration Judge are restricted from their right
3 to travel because an Immigration Judge's order is not recognized as evidence of registration of
4 LPR status to allow admittance into the United States. 8 C.F.R. § 211.1(a).

5 52. IRCA also provides that Permanent Resident Cards can be used as proof of LPR
6 status to establish eligibility for a variety of government funded assistance programs.
7 Specifically, eligibility for programs such as Aid to Families with Dependent Children, Medicaid,
8 unemployment compensation, food stamps, and Title IV educational assistance can be established
9 by presenting a Permanent Resident Card. IRCA, § 121(a)(1)-(a)(3). While not the exclusive
10 means of providing proof of LPR status under these provisions, the Permanent Resident Card is
11 the most widely utilized and accepted means of proving LPR status, and possession of a
12 Permanent Residence Card is a prerequisite for obtaining some of the other accepted documents.

13 53. As a result of lacking evidence of their legal status in the United States, LPRs live
14 in fear of being apprehended in raids for undocumented aliens and detained or deported by law
15 enforcement officials.

16 VII. PLAINTIFFS AND STATEMENT OF FACTS

17 A. Maria Santillan

18 54. Maria Santillan is a native of Mexico and has been living in the United States for
19 almost 20 years. She currently lives in Merced, California with two sons. One son is a U.S.
20 citizen, and the other is an LPR.

21 55. In February 1998, the INS notified Ms. Santillan that they were placing her in
22 removal proceedings and seeking to remove her from the United States.

23 56. Ms. Santillan requested relief from removal under 8 U.S.C. § 1229b(b)(2) on the
24 basis that her then-spouse physically abused her.

25 57. Ms. Santillan submitted the required forms and fingerprints in the course of
26 applying for adjustment to LPR status.

27 58. On May 19, 2003 an Immigration Judge in San Francisco, California granted Ms.
28 Santillan's application for adjustment to LPR status.

1 **59.** The DHS waived appeal of the Immigration Judge's order, which became final on
2 May 19, 2003.

3 **60.** Ms. Santillan's immigration attorney requested that USCIS initiate ADIT
4 processing and issue her evidence of registration as an LPR. To date, the Fresno office of USCIS,
5 a sub-office of the San Francisco USCIS, has not responded to Ms. Santillan's requests.

6 **61.** The USCIS has not permitted Ms. Santillan to begin ADIT processing. She has
7 not received any evidence of LPR status from the USCIS since her adjustment to LPR status in
8 May 2003.

9 **62.** Ms. Santillan applied for and was granted an Employment Authorization
10 Document ("EAD") during the pendency of her removal proceedings. The EAD expired on
11 August 25, 2003. She tried to renew her EAD, but in January 2004, the USCIS sent her a letter
12 rejecting her application to renew. Because she is an LPR, she cannot seek extension of her EAD
13 card.

14 **63.** Ms. Santillan works on a seasonal basis packaging vegetables. Currently, she is
15 employed by two packaging companies. Her supervisor at one of the packaging companies
16 recently asked her for documents proving her eligibility to work. He initially rejected the Judge's
17 order as insufficient to show authorization to work. Ms. Santillan is greatly concerned that she
18 may lose one or both of her jobs if asked again by her employers to show work authorization.
19 Ms. Santillan is also fearful of being caught up in a government raid targeted at individuals who
20 are not lawfully in the United States, because she does not have proper documentation of her LPR
21 status.

22 **64.** As a seasonal worker, Ms. Santillan routinely has periods when she is
23 unemployed. In September 2003 and April 2004, she was denied unemployment benefits (even
24 though she was eligible to collect unemployment benefits given her employment record) because
25 she could not prove she was authorized to work based on her LPR status. This denial of
26 unemployment benefits created a substantial hardship for her.

27 **65.** Ms. Santillan would like to visit her mother, who is 85 years old, in Mexico.
28 Without evidence of LPR registration from USCIS, she is unable to do so because she may be

1 unable to re-enter the United States.

2 **B. Flora Carolina Rodriguez Santillan**

3 66. Flora Carolina Rodriguez Santillan is a native of Mexico and has been living in
4 the United States for almost 20 years. She currently lives in Merced, California with her lawful
5 resident husband and U.S. citizen son.

6 67. In February 1998, the INS served Ms. Rodriguez with a notice that the agency
7 was initiating removal proceedings against her.

8 68. Ms. Rodriguez requested adjustment to LPR status under 8 U.S.C. § 1229b(b)(2),
9 based on the fact that her father, an LPR, physically abused her mother and mentally abused her.

10 69. Ms. Rodriguez submitted the required forms and fingerprints in the course of
11 applying for adjustment to LPR status.

12 70. On May 19, 2003, an Immigration Judge in San Francisco, California granted Ms.
13 Rodriguez's application for adjustment to LPR status.

14 71. The DHS waived appeal of the Immigration Judge's order, which became final on
15 May 19, 2003.

16 72. Ms. Rodriguez's immigration attorney requested that USCIS initiate ADIT
17 processing and issue evidence of her registration as an LPR. To date, the Fresno office of the
18 USCIS, which is a sub-office of San Francisco USCIS, has not responded to her requests.

19 73. The USCIS has not permitted Ms. Rodriguez to begin ADIT processing. She has
20 not received any evidence of her LPR status from the USCIS since her adjustment to LPR status
21 in May 2003.

22 74. Ms. Rodriguez applied for and was granted an EAD during the pendency of her
23 removal proceedings. The EAD expired on August 25, 2003. She tried to renew her EAD, but in
24 January 2004, the USCIS sent her a letter rejecting her application to renew. Because she is an
25 LPR, she cannot seek extension of her EAD card.

26 75. In September 2003, Ms. Rodriguez was dismissed from her employment with a
27 major retail chain. Ms. Rodriguez had been employed by the retailer for more than five years.
28 Most recently, she had been working as a cashier, and she was about to be promoted to a more

1 senior position.

2 76. The retailer terminated Ms. Rodriguez's employment because she could not prove
3 that she was authorized to work in the United States. Ms. Rodriguez provided her supervisor a
4 copy of the Immigration Judge's May 19, 2003 order granting her LPR status. However, her
5 employer would not accept the order as proof of Ms. Rodriguez's authorization to work.

6 77. The retailer allowed Ms. Rodriguez six months to present evidence that she was
7 lawfully in the United States and was authorized to work. If Ms. Rodriguez had presented
8 evidence of registration as an LPR within six months, she would have retained her job and her
9 seniority. However, because Defendants refused to allow her to begin ADIT processing and
10 failed to provide her with any evidence of registration as an LPR, Ms. Rodriguez lost her job, her
11 health benefits and other benefits associated with her seniority.

12 78. Ms. Rodriguez has secured employment with another company. However, she
13 has been asked to present proof of work authorization. She is concerned that her new employer
14 also will not accept the Immigration Judge's order and that she will be terminated.

15 **C. Jaime Aurelio Rodriguez Santillan**

16 79. Jaime Aurelio Rodriguez Santillan is a native of Mexico and has been living in the
17 United States for almost 20 years. He currently lives in Merced, California with his mother, who
18 is an LPR.

19 80. In February 1998, the INS served him with a notice that the agency was initiating
20 removal proceedings against him.

21 81. Mr. Rodriguez requested adjustment to LPR status under 8 U.S.C. § 1229b(b)(2),
22 based on the fact that his father, an LPR, physically abused his mother.

23 82. Mr. Rodriguez submitted the required forms and fingerprints in the course of
24 applying for adjustment to LPR status.

25 83. On May 19, 2003, an Immigration Judge in San Francisco, California granted Mr.
26 Rodriguez's application for adjustment to LPR status.

27 84. The DHS waived appeal of the Immigration Judge's order, which became final on
28 May 19, 2003.

1 85. Mr. Rodriguez's immigration attorney requested that USCIS initiate ADIT
2 processing and issue evidence of his registration as an LPR. To date, the Fresno office of the
3 USCIS, which is a sub-office of San Francisco USCIS, has not responded to Mr. Rodriguez's
4 requests.

5 86. The USCIS has not permitted Mr. Rodriguez to begin ADIT processing. He has
6 not received any evidence of LPR status from the USCIS since he was granted adjustment to LPR
7 status in May 2003.

8 87. Mr. Rodriguez applied for and was granted an EAD during the pendency of the
9 removal proceedings. The EAD expired on August 25, 2003. He tried to renew his EAD, but in
10 January 2004, the USCIS sent him a letter rejecting his application to renew. Because he is an
11 LPR, he cannot seek extension of his EAD card.

12 88. Mr. Rodriguez is currently employed. He is concerned that, if requested to
13 present evidence of employment eligibility, he will not be able to do so and his employment may
14 be terminated.

15 **D. Angela DeSouza**

16 89. Angela DeSouza was born in Mexico. She is married to a U.S. citizen. Ms.
17 DeSouza and her husband reside in Elgin, Illinois.

18 90. On May 19, 1998, the INS served Ms. DeSouza with a notice that the agency was
19 initiating removal proceedings against her.

20 91. Ms. DeSouza requested adjustment to LPR status based on her marriage to a U.S.
21 citizen.

22 92. Ms. DeSouza submitted the required forms and fingerprints in the course of
23 applying for adjustment to LPR status.

24 93. On September 12, 2003, an Immigration Judge in Chicago, Illinois granted Ms.
25 DeSouza's application for adjustment to LPR status.

26 94. The DHS waived appeal of the Immigration Judge's order, which became final on
27 September 12, 2003.

28 95. In December 2003, Ms. DeSouza's immigration attorney requested that USCIS

1 initiate ADIT processing and issue her evidence of her registration as an LPR. Ms. DeSouza has
2 also twice gone to USCIS specifically to request a temporary I-551 stamp on her passport
3 evidencing registration as a LPR. Both times, the USCIS representative refused to stamp her
4 passport. Every 90 days, her immigration attorney has sent a letter to USCIS requesting ADIT
5 processing. The last letter was sent June 2, 2004.

6 **96.** The USCIS has not permitted Ms. DeSouza to begin ADIT processing. She has
7 not received any evidence of LPR status from the USCIS since she was granted adjustment to
8 LPR status in September 2003.

9 **97.** Ms. DeSouza would like to travel to Mexico to see her grandfather and her aunt.
10 Both are very ill, and she has not seen them in 12 years. Without evidence of LPR registration
11 from USCIS, she is unable to travel to visit them because she may be unable to re-enter the
12 United States.

13 **E. Marcos Jose Sosa Cartagena**

14 **98.** Marcos Jose Sosa Cartagena was born in Honduras. He came to the United States
15 in July 2002 and has resided continuously in the United States since that time.

16 **99.** Mr. Sosa Cartagena currently lives in Covina, California with his aunt, her
17 husband and their two children.

18 **100.** In July 2002, the INS served Mr. Sosa Cartagena with a notice that the agency
19 was placing him in removal proceedings.

20 **101.** Mr. Sosa Cartagena applied for adjustment of status as a special immigrant
21 juvenile based on his condition as a minor in need of long-term foster care due to abuse, neglect
22 or abandonment, and the fact that removal to his home country was not in his best interest.

23 **102.** Mr. Sosa Cartagena submitted the required forms and fingerprints in the course of
24 applying for adjustment to LPR status.

25 **103.** On December 8, 2003, an Immigration Judge in Los Angeles, California granted
26 Mr. Sosa Cartagena's application for adjustment to LPR status.

27 **104.** The DHS waived appeal of the Immigration Judge's order, which became final on
28 December 8, 2003.

1 **105.** Mr. Sosa Cartagena's immigration attorney has requested that USCIS initiate
2 ADIT processing and issue him evidence of his registration as an LPR on three separate
3 occasions: January 8, 2004, March 1, 2004, and May 15, 2004. To date, Los Angeles USCIS has
4 not taken any action on Mr. Sosa Cartagena's requests.

5 **106.** Mr. Sosa Cartagena has not been permitted to begin ADIT processing. He has not
6 received any evidence of LPR status from the USCIS since his adjustment to LPR status in
7 December 2003.

8 **107.** Mr. Sosa Cartagena wishes to attend community college in a program that would
9 allow him to obtain his high school diploma. The lack of documentary proof of his registration as
10 an LPR has prevented him from enrolling in Mt. San Antonio Community College in West
11 Covina, California. He is not able to obtain in-state tuition rates without proof of his LPR status,
12 and he cannot afford out-of-state tuition.

13 **108.** Mr. Sosa Cartagena is an orphan and needs to work to support himself. In May of
14 2004, he tried to get a job, but the prospective employer told him that he could not be hired
15 because he did not have documentation that he is authorized to work. Without documentation of
16 his LPR status, he cannot obtain lawful employment.

17 **109.** In the area where Mr. Sosa Cartagena lives, the U.S. Immigration and Customs
18 Enforcement officials frequently conduct raids to gather and deport individuals who are not
19 lawfully in the United States. Mr. Sosa Cartagena is very concerned that he will be caught up in
20 one of those raids and mistakenly deported, because he does not have evidence of registration as
21 an LPR.

22 **F. Ziber Ismaili**

23 **110.** Mr. Ismaili was born in Macedonia. He came to the United States in March 1996
24 and has resided continuously in the United States since that time. He currently lives in Wisconsin
25 Rapids, Wisconsin with his wife and stepdaughter, who are U.S. citizens.

26 **111.** In March 1996, the INS served Mr. Ismaili with a notice that the agency was
27 initiating deportation proceedings against him.

28 **112.** Mr. Ismaili requested adjustment to LPR status based on his marriage to a U.S.

1 citizen.

2 **113.** Mr. Ismaili submitted the required forms and fingerprints in the course of
3 applying for adjustment to LPR status.

4 **114.** On July 23, 2003, an Immigration Judge in Chicago, Illinois granted his
5 application for adjustment to LPR status.

6 **115.** The DHS waived appeal of the Immigration Judge's order, which became final on
7 July 23, 2003.

8 **116.** Mr. Ismaili has made several attempts in person and in writing to obtain evidence
9 of registration as an LPR. On November 3, 2003, he and his attorney went to the Chicago office
10 of the USCIS and was told that his file was being transferred to the USCIS office in Milwaukee,
11 Wisconsin. He then went to the Milwaukee USCIS office to register as an LPR. The Milwaukee
12 USCIS office refused to begin ADIT processing and refused to issue him documents proving his
13 LPR status. The Milwaukee USCIS office told Mr. Ismaili that his file was still at the USCIS
14 office in Chicago.

15 **117.** On December 31, 2003, Mr. Ismaili filed a written request with the Chicago
16 USCIS adjudications supervisor. On March 5, 2004, he filed a second written request with the
17 Chicago USCIS adjudications supervisor. To date the USCIS has taken no action on Mr.
18 Ismaili's request for ADIT processing and has not issued evidence of registration as an LPR.

19 **118.** Mr. Ismaili has not been permitted to begin ADIT processing. He has not
20 received any evidence of LPR status from the USCIS since he was granted adjustment to LPR
21 status in July 2003.

22 **119.** Mr. Ismaili had an EAD, but it expired on March 26, 2004. He and his wife own
23 a restaurant. He is concerned that, without documentation evidencing his LPR status, he may
24 have problems filing his taxes.

25 **120.** Mr. Ismaili is prevented from traveling to Macedonia to see his family due to his
26 lack of proof of his LPR status. Mr. Ismaili's ten-year-old daughter still lives in Macedonia. His
27 mother has been taking care of his daughter, but his mother is elderly and now very ill. She
28 recently suffered a stroke and a heart attack, but Mr. Ismaili was unable to travel to Macedonia to

1 visit her. He has not seen his mother or his daughter in eight years. His mother is now too sick to
2 take care of his daughter. He urgently wishes to travel to Macedonia to see his mother and to
3 make arrangements for someone else to care for his daughter until she is able to come to the
4 United States to be with him. Without evidence of LPR registration from USCIS, he is unable to
5 do so because he may be unable to re-enter the United States.

6 **G. Anita Lasbrey**

7 **121.** Ms. Lasbrey was born in Nigeria. She came to the United States in 1988 and has
8 resided continuously in the United States since that time. She currently lives in Bronx, New
9 York with her two children, who are U.S. citizens.

10 **122.** On December 9, 2002, the INS served Ms. Lasbrey with a notice that the agency
11 was initiating removal proceedings against her.

12 **123.** Ms. Lasbrey requested cancellation of removal and adjustment to LPR status
13 based on the hardship to her U.S. citizen children.

14 **124.** Ms. Lasbrey submitted the required forms and fingerprints in the course of
15 applying for adjustment to LPR status.

16 **125.** On July 7, 2003 an Immigration Judge in New York City granted Ms. Lasbrey's
17 application for adjustment of status and accorded her LPR status.

18 **126.** The DHS waived appeal of the Immigration Judge's order, which became final on
19 July 7, 2003.

20 **127.** On November 7, 2003, Ms. Lasbrey's immigration attorney requested that USCIS
21 initiate ADIT processing and issue her evidence of registration as an LPR. The New York USCIS
22 office responded by stating that it might take as long as 120 days to initiate ADIT processing.
23 Ms. Lasbrey's attorney sent additional letters on February 5, 2004 and May 13, 2004 requesting
24 ADIT processing and temporary documentation of LPR status. On February 10, 2004, Ms.
25 Lasbrey went in person to the New York USCIS office to reiterate her request, and was again told
26 to wait for USCIS to initiate the ADIT process.

27 **128.** Ms. Lasbrey has not been permitted to begin ADIT processing. She has not
28 received any evidence of LPR status from the USCIS in the 11 months since her adjustment to

1 LPR status.

2 **129.** Ms. Lasbrey is concerned that she will be unable to obtain employment without
3 documentation of her LPR status and as a result, will find it difficult to support her two children.

4 **130.** Ms. Lasbrey would like a driver's license but has not attempted to obtain one,
5 because she does not have documentation of her LPR status.

6 **131.** Ms. Lasbrey attempted to obtain a Social Security card using the Immigration
7 Judge's order granting her LPR status, but she was told that the order was insufficient proof of
8 LPR status.

9 **132.** Ms. Lasbrey attends community college, but because she cannot prove her LPR
10 status, she must pay the higher foreign student tuition.

11 **133.** Ms. Lasbrey desires to visit her five siblings who remain in Nigeria. She has not
12 seen them in 16 years. In April 2004, her cousin was married in London and Ms. Lasbrey was
13 unable to go, because without documentation of her LPR status, she may not be able to re-enter
14 the United States.

15 **H. Zoila Lopez-Gonzalez**

16 **134.** Zoila Lopez-Gonzalez is a native of Guatemala and has been living in the United
17 States for more than 15 years. She currently lives in Miami, Florida with her two daughters, who
18 are U.S. citizens.

19 **135.** In 1990, the INS served Ms. Lopez with a notice that the agency was initiating
20 deportation proceedings against her.

21 **136.** Ms. Lopez requested relief from removal based on a special rule of cancellation of
22 removal under the Nicaraguan Adjustment and Central American Relief Act (NACARA), Pub. L.
23 No. 105-100, 111 Stat. 2160, tit. II, Div. A (Nov. 19, 1997), as amended by Pub. L. No. 105-139,
24 111 Stat. 2644 (Dec. 2, 1997) § 203. Ms. Lopez submitted the necessary forms and her
25 fingerprints during the process.

26 **137.** On October 20, 2003, an Immigration Judge in Miami, Florida granted her
27 application for cancellation of removal and accorded Ms. Lopez LPR status.

28 **138.** The DHS waived appeal of the Immigration Judge's order, which became final on

1 October 20, 2003.

2 139. Ms. Lopez waited several months for receipt of her temporary evidence of lawful
3 status.

4 140. On or about March 10, 2004, Ms. Lopez went to the Miami office of the USCIS to
5 inquire about her Permanent Resident Card. A USCIS official advised Ms. Lopez that she would
6 have to wait six months to a year. Ms. Lopez then presented the Immigration Judge's October 20,
7 2003 order and requested an I-551 stamp on her passport. The USCIS official responded that he
8 could not stamp Ms. Lopez's passport with an I-551 stamp, despite the Immigration Judge's
9 order.

10 141. Ms. Lopez has not been permitted to begin ADIT processing. She has not
11 received any evidence of LPR status from the USCIS in the eight months since she was granted
12 adjustment to LPR status.

13 142. Ms. Lopez applied for and was granted an EAD during the pendency of her
14 removal proceedings. The EAD was issued on June 4, 2003, and expired on June 3, 2004.
15 Because she is an LPR, she cannot seek extension of her EAD card.

16 143. Ms. Lopez is currently working. However, she is very concerned that she may
17 lose her job if her employer requests updated verification of her employment eligibility.

18 144. Ms. Lopez had a driver's license, but it expired when her EAD expired on June 3,
19 2004, and she was only able to get a 30 day extension on the license. Ms. Lopez is very upset
20 about the expiration of her driver's license, because she relies heavily on her car. Ms. Lopez
21 needs a driver's license to drive to work, to drive her daughters to school, and to drive to English
22 classes.

23 145. Ms. Lopez desires to visit her family members in Guatemala. She last saw five of
24 her siblings, who live in Guatemala, almost 19 years ago. Without evidence of LPR registration
25 from USCIS, she is unable to travel to Guatemala, because she may be unable to re-enter the
26 United States.

27 **I. Rafaela Valdez Parra**

28 146. Rafaela Valdez Parra was born in Sinaloa, Mexico. She came to the United States

1 in October 1988 and has resided continuously in the United States since that time.

2 **147.** Ms. Valdez currently lives in San Jose, California with her husband and five U.S.
3 citizen children.

4 **148.** On March 26, 2002, the INS served Ms. Valdez with a notice that the agency was
5 initiating removal proceedings against her.

6 **149.** Because of the hardship her U.S. citizen children would suffer, she requested
7 adjustment to LPR status. Ms. Valdez submitted the required forms and fingerprints in the course
8 of applying for adjustment to LPR status.

9 **150.** On May 21, 2003 an Immigration Judge in San Francisco, California granted her
10 application for adjustment to LPR status.

11 **151.** The DHS did not appeal the Immigration Judge's order and the order became final
12 30 days later.

13 **152.** On June 1, 2003, Ms. Valdez' immigration attorney requested that the San
14 Francisco office of the USCIS schedule her for ADIT processing and issue her evidence of
15 registration as an LPR. To date, San Francisco USCIS has taken no action on her request.

16 **153.** Ms. Valdez has not been permitted to begin ADIT processing. She has not
17 received any evidence of LPR status from the USCIS in the year since she was granted
18 adjustment to LPR status.

19 **154.** Ms. Valdez' EAD expired in May 2003. Because she is an LPR, she cannot seek
20 extension of her EAD card.

21 **155.** Ms. Valdez is currently seeking employment. She is worried that she will not be
22 able to obtain employment because she does not have proper documentation of her LPR status.

23 **156.** Ms. Valdez wishes to travel to Mexico to visit her parents and seven brothers
24 whom she has not seen in over ten years. Without evidence of LPR registration from USCIS, she
25 is unable to do so because she may be unable to re-enter the United States.

26 **J. Maria Valda Mohamad**

27 **157.** Maria Valda Mohamad is a native of Brazil and has been living in the United
28 States for almost 17 years. She currently lives in Temecula, California (Riverside County) with

1 her U.S. citizen daughter.

2 **158.** In September 1998, the INS began removal proceedings against her.

3 **159.** Ms. Valda requested adjustment to LPR status under 8 U.S.C. § 1229(b)(1) based
4 on the hardship to her youngest daughter.

5 **160.** Ms. Valda submitted the required forms and fingerprints in the course of applying
6 for adjustment to LPR status.

7 **161.** On January 7, 2003, an Immigration Judge in Los Angeles, California granted her
8 application for cancellation of removal and accorded Ms. Valda LPR status.

9 **162.** The INS waived appeal of the Immigration Judge's order, which became final on
10 January 7, 2003.

11 **163.** From January 2003 until May 2003, Ms. Valda waited for the INS or the USCIS
12 to send her documentation of her LPR status, or to instruct her as to how to proceed to become
13 registered as an LPR.

14 **164.** When she had not received any communication about her registration as an LPR
15 by May 2003, Ms. Valda's immigration attorney requested that USCIS initiate ADIT processing
16 and issue evidence of registration as an LPR. Her immigration attorney faxed letters to Los
17 Angeles USCIS with such requests on May 7, 2003, and again on June 7, 2003. Ms. Valda has
18 gone to the Los Angeles USCIS office in person twice to ask about her permanent resident card.
19 The first time was in May 2004. She went to the Los Angeles USCIS office again on June 3,
20 2004, and was told that background checks were being performed, which would take another
21 three months.

22 **165.** Ms. Valda has not been permitted to begin ADIT processing. She has not
23 received any evidence of LPR status from the USCIS in the 17 months since her adjustment to
24 LPR status.

25 **166.** Ms. Valda applied for and was granted an EAD during the pendency of her
26 removal proceedings. The EAD expired on February 25, 2003. Because she is an LPR, she
27 cannot seek extension of her EAD card.

28 **167.** Currently, Ms. Valda cannot work because she lacks proof of her LPR status and

authorization to work. On or about June 4, 2004, she went to a staffing agency, seeking employment. She presented the Immigration Judge's order to the representative at the staffing agency. However, the representative told her that they could not staff her because she did not have proof of employment eligibility. She has received similar responses from three other staffing agencies.

168. Ms. Valda desperately wants to work to provide for her youngest daughter and herself. She also desires to secure health insurance and her own housing. However, she is unable to secure employment for lack of documentation of her LPR status. In March 2003, because she was unable to work and unable to support herself and her youngest daughter, Ms. Valda and her youngest daughter were forced to move in with Ms. Valda's oldest daughter and son-in-law. Ms. Valda is deeply ashamed that she must rely financially on her daughter.

169. Ms. Valda desires to travel to Brazil to see her mother and seven of her sisters. Her mother is 81 years old and is very ill. She has not seen her mother for more than ten years and would like to see her before she passes away. Without evidence of LPR registration from USCIS, she is unable to do so because she may be unable to re-enter the United States.

VIII. CLASS ALLEGATIONS

170. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals. The plaintiff-class consists of:

All persons who were or will be granted lawful permanent resident status by the EOIR, through the Immigration Courts or the Board of Immigration Appeals of the United States, and to whom USCIS has failed to issue evidence of registration as a lawful permanent resident.

171. The class is so numerous that joinder of all members is impracticable. The number of individuals who have been granted relief from deportation fluctuates, as immigration courts nationwide continually grant LPR status and cancellation of removal. The class numbers also vary due to issuance of documentation to some LPRs. Therefore, although the number of class members is not known with precision, the class is believed to number in the thousands.

1 based on figures reported in the U.S. Department of Justice, Executive Office for Immigration
2 Review FY 2003 Statistical Year Book.

3 172. Moreover, class members may reside anywhere in the United States. The
4 resultant difficulties in contacting and communicating with members of the class make joinder of
5 all class members impractical.

6 173. The named Plaintiffs and class members share common questions of law and fact.
7 Common questions of law include whether USCIS has violated its duty to issue evidence of
8 registration as an LPR to individuals granted such status in removal proceedings. The policies
9 and procedures of the USCIS in relation to issuance of temporary and permanent documentation
10 to individuals granted LPR status in removal proceedings constitute common questions of fact.

11 174. The claims of the named Plaintiffs are typical of the claims of the class. Plaintiffs
12 know of no conflict between their interests and those of the class they seek to represent. In
13 defending their own rights, the individual Plaintiffs will defend the rights of all proposed class
14 members.

15 175. The named Plaintiffs are adequate representatives of the class.

16 176. Defendants have acted on grounds generally applicable to each member of the
17 class insofar as they have failed to provide to class members adequate documentation of their
18 LPR status.

19 **B. Factual Allegations Common to the Class**

20 177. A class of persons similarly situated to Plaintiffs was placed in removal
21 proceedings by Defendants.

22 178. Class members applied for relief from deportation or removal. Pursuant to federal
23 regulations, they submitted the proper forms, evidence, and fees.

24 179. Prior to the final hearing on their applications for relief, the USCIS fingerprinted
25 class members, and FBI checks revealed no arrests and no other derogatory information that
26 prevented adjusting their status to LPRs.

27 180. At a later date, the Immigration Court conducted a hearing on each class
28 member's request for relief from deportation or removal. Defendants had the opportunity to

1 challenge or oppose the request.

2 **181.** The Immigration Court granted each class member's request for relief from
3 deportation or removal. Defendants had the right to appeal the decision of the Immigration Court
4 but did not appeal. The Immigration Court's order consequently became final.

5 **182.** After obtaining relief from deportation or removal, class members sought to
6 register as LPRs with the USCIS. Class members sought to initiate ADIT processing and to
7 obtain evidence of registration, such as the temporary I-551 stamp and Permanent Resident Cards.

8 **183.** The USCIS rejected class members' request for evidence of registration as LPRs.

9 **184.** The USCIS has failed to issue any evidence of registration as LPRs to class
10 members over lengthy periods of time. Among the representative Plaintiffs, Plaintiffs have
11 awaited evidence of registration for six to 17 months. In most cases, USCIS has not initiated
12 ADIT processing. Class members, though vested with the rights of LPRs by law, have been
13 without documentary proof of their LPR status during these prolonged waiting periods.

14 **185.** The lack of evidence of registration of LPR status in the United States has caused
15 great hardship to class members.

16 **186.** Class members have encountered problems securing or retaining employment,
17 because they cannot demonstrate their eligibility for employment in the United States.

18 **187.** Class members have been prevented from obtaining unemployment and other
19 government benefits, because they cannot demonstrate that they are LPRs.

20 **188.** Class members have been unable to enjoy the benefits of in-state tuition in state
21 colleges, because they cannot demonstrate that they are LPRs.

22 **189.** Class members have been unable to obtain driver's licenses and Social Security
23 cards, because they cannot demonstrate that they are LPRs.

24 **190.** Class members are unable to travel outside the United States, because they lack
25 documentation to re-enter the United States.

26 **191.** Class members fear being detained or deported by law enforcement officials
27 because class members cannot demonstrate that they are LPRs.

1 **IX. CAUSES OF ACTION**

2 **First Cause of Action**

3 **(Violation of Fifth Amendment)**

4 **192.** Petitioners hereby incorporate the information in paragraphs 1 through 191 above
5 as if fully set forth herein.

6 **193.** Defendants' refusal to issue class members evidence of registration as LPRs
7 constitutes a violation of procedural due process rights under the Fifth Amendment of the U.S.
8 Constitution.

9 **194.** Defendants' refusal to issue class members evidence of registration as LPRs also
10 violates substantive due process rights under the Fifth Amendment of the U.S. Constitution.

11 **Second Cause of Action**

12 **(Violation of Administrative Procedures Act , 5 U.S.C. §§ 701 *et seq.*)**

13 **195.** Petitioners hereby incorporate the information in paragraphs 1 through 194 above
14 as if fully set forth herein.

15 **196.** Defendants, specifically the USCIS acting under the authority of the Attorney
16 General and the Secretary for the DHS, have a clear ministerial duty to issue evidence of
17 registration to LPRs as prescribed by the INA. 8 U.S.C. §§ 1302, 1304(d).

18 **197.** Class members have no alternative remedy when Defendants refuse to issue class
19 members evidence of registration as LPRs.

20 **198.** Defendants' refusal to issue class members evidence of registration as LPRs
21 constitutes violations of the Administrative Procedures Act. 5 U.S.C. § 706.

22 **Third Cause of Action**

23 **(Mandamus Act, 28 U.S.C. § 1361)**

24 **199.** Petitioners re-allege and incorporate by reference paragraphs 1 through 198 above
25 as if fully set forth herein.

26 **200.** As an alternative basis for jurisdiction and compelling government officials to act,
27 Plaintiffs rely on the Mandamus Act. 28 U.S.C. § 1361. Mandamus relief is appropriate in this
28

case, where Defendants owe a clear non-discretionary duty to Plaintiff class members to issue documentation evidencing LPR status, and Defendants have been derelict in this duty.

Fourth Cause of Action

(Declaratory Judgment Act, 28 U.S.C. § 2201)

201. Petitioners re-allege and incorporate by reference paragraphs 1 through 200 above as if fully set forth herein.

202. Plaintiffs seek a declaration that Defendants' actions are unlawful and constitute violations of legal duties that Defendants owe to Plaintiffs under the Immigration and Naturalization Act.

Fifth Cause of Action

(Equal Access to Justice Act)

203. Petitioners hereby incorporate the information in paragraphs 1 through 202 above as if fully set forth herein.

204. If they prevail, Petitioners will seek attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), *as amended* 5 U.S.C. § 504 and 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectively ask the Court to:

1. Assume jurisdiction over this matter;
2. Certify a class of all persons who were or will be granted legal permanent resident status in removal proceedings in the United States and to whom USCIS has failed to issue evidence of registration as an LPR;
3. Declare that Defendants' policies, practices and customs, which deprive Plaintiffs and class members of evidence of their LPR status in the United States, violate the U.S. Constitution, the Immigration and Nationality Act, the Immigration Reform and Control Act of 1986, and the Administrative Procedures Act.
4. Enjoin Defendants from denying Plaintiffs and class members temporary or permanent documentary evidence of their LPR status in the United States;
5. Order Defendants to issue Plaintiffs and class members evidence of registration as

1 LPRs in a prompt manner, no more than 14 days after final grant of LPR status;


2 6. Award Plaintiffs' counsel reasonable attorney's fees and costs; and

3 7. Grant such other and further relief as may be just and proper.

4
5 Dated: July 6, 2004

Respectfully submitted,

6 COOLEY GODWARD LLP

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